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March 11, 2005

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 13, 2004

Case Number: TSO-0093

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office suspended the individual's access authorization after determining that information in its possession created substantial doubt about the individual's continued eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual's access authorization should not be restored.

Background

Since 1982, the individual has worked for a contractor at a DOE facility where some assignments require an access authorization. The local security office issued a Notification Letter to the individual on February 9, 2004. The Notification Letter alleges that the local security office has substantial doubt about the individual's continued eligibility for access authorization, based upon disqualifying criteria set forth in section 710.8, paragraphs (j) and (l).

The Notification Letter alleges that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8(j) (Criterion J). This charge is based on an evaluation and report of a DOE consultant psychiatrist who determined that the individual suffers from alcohol abuse without evidence of rehabilitation or reformation, an arrest for domestic violence that the local security office contends is alcohol-related, and the individual's resumption of alcohol use after a short period of abstinence. The Notification Letter also alleges that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of the

national security. 10 C.F.R. § 710.8(l) (Criterion L). This charge is based on three arrests that the local security office contends are alcohol-related, two involving domestic violence in 2000 and 2002, and one resulting from a head-on collision in 1983.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local security office transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE consultant psychiatrist. The individual, who represented himself, testified on his own behalf, and called four other witnesses, his wife's grandmother, his family physician, a co-worker, and a supervisor. The local security office submitted 30 written exhibits. The individual provided a written answer to the charges in the Notification Letter, and submitted five written exhibits.

Standard of Review

The applicable DOE regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the local security office has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince the DOE that restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a). For the reasons discussed below, it is my opinion that the

individual has not resolved the concerns in the Notification Letter, and therefore his access authorization should not be restored at this time.

Findings of Fact

Except as noted, the individual does not dispute the facts alleged in the Notification Letter. In July 1983, the individual was involved in a head-on automobile accident after drinking six beers earlier that day. DOE Exh. 30 (Transcript of Personnel Security Interview, December 28, 1983) at 19. As a result of this accident, the individual was charged with driving while intoxicated (DWI). He did not believe he was drunk at the time of the accident. *Id.* at 17-19.

On November 5, 2000, the individual was arrested for battery and domestic violence after striking one of his daughters¹ in their home. He admitted that he had drunk four beers and two glasses of wine earlier that same evening while watching football. *See* DOE Exh. 28 (Transcript of Personnel Security Interview, February 22, 2001) at 7-9. He did not feel intoxicated at the time of the incident, but acknowledged that he reacted too quickly because of the alcohol he had consumed. *Id.* at 12.

During that same February 2001 interview, the individual reported that he had stopped drinking alcohol as of the first week of January 2001, “[b]ecause I’ve been told . . . too many times that . . . if I were even to open up a beer . . . a terrible thing is going to happen. . . . I don’t want . . . anybody coming to me and saying it’s my drinking that’s causing all these problems.” *Id.* at 25-26. He then entered a court-ordered Early Intervention Program, a six-month conflict management counseling program during the course of which he was not supposed to drink any alcohol. *Id.* at 27-28, 42. The individual reported that the program staff did not feel that he had a problem with alcohol and did not send him for an alcohol evaluation. *Id.* at 41. He also reported that before January 2001 his usual pattern of alcohol consumption was a six-pack of beer every Sunday and three or four on some Friday nights, for an average total of six six-packs per month. *Id.* at 34-35.

In September 2002 the individual reported that he had resumed drinking alcohol in or around November 2001. He described his drinking pattern as “maybe . . . three or four on a Saturday or Sunday . . . [but not] every weekend.” *See* DOE Exh. 27 (Transcript of Personnel Security Interview, September 10, 2002) at 37. On August 18, 2002, the individual was arrested for four counts of aggravated battery against a household member. With regard to this second domestic abuse event, the individual reported that the incident took place around 10:00 that evening, and that he had drunk three beers between 6:00 and 7:30 or 8:00. *Id.* at 12-13.² He also reported that he had told the

¹ The individual and his wife have a blended family of daughters and step-daughters. I will refer to all of the children in the family as “daughters.”

² The individual’s treating physician testified at the hearing that his notes from a February 28, 2003 appointment indicate that the individual told him he had “had two beers early Sunday afternoon, and about eight hours after that intake that he and his wife got into a substantial argument.” Transcript of Hearing, Case No. TSO-0093 (Tr.) at 83. The individual repeated this version of the facts in his Response to the

arresting officers that he had not been drinking because he felt, “at the time that [the three beers] did not constitute I had been drinking.” *Id.* at 14. According to the individual, all charges related to the August 18 incident were then dropped, but child protective services conducted an investigation of the home and removed the children to a foster home. *Id.* at 16-17, 20, 25. The individual agreed to participate in a treatment plan devised by child protective services, which was to include anger management classes, evaluations, and random drug and alcohol testing. *Id.* at 27-28. Finally, he reported that he stopped drinking alcohol again on August 18, 2002, after the domestic abuse incident. *Id.* at 38. He reasoned that he cannot risk being labeled with an alcohol problem because he drinks one or two beers, so he “just won’t do it anymore.” *Id.*

As a result of that September 2002 interview, the local security office arranged for the individual to be evaluated by a DOE consultant psychiatrist. The evaluation took place in March 2003 and was summarized in a report the DOE psychiatrist provided to the local security office, which also included his review of the individual’s personnel security file and his diagnosis. DOE Exh. 13. In his report, the DOE psychiatrist noted, among other information, that during his first marriage, from 1980 through 1998, he became intoxicated about twice a month. *Id.* at 3. He referred to a police report concerning the 2000 domestic violence incident, in which “all the daughters stated that their father drank every day and they had become afraid of him when he gets angry after drinking.” *Id.* at 4. He further relates that the individual indicated he had consumed no alcohol since his arrest on August 18, 2002, though he “ ‘might have a beer or two’ sometime in the future.” *Id.* at 5. On the basis of the individual’s interview, his family and medical history, which included abnormally elevated liver enzyme levels,³ and his three alcohol-related arrests, he concluded that the individual suffers from alcohol abuse without adequate evidence of rehabilitation or reformation. *Id.* at 10.

Testimony of the Witnesses at the Hearing

The DOE Psychiatrist

The DOE psychiatrist testified that he reached his diagnosis that the individual suffers from alcohol abuse by reviewing the individual’s personnel security file, administering a psychological personality test, interviewing him, and ordering and reviewing blood and urine analyses. Tr. at 13. In his testimony the DOE psychiatrist discussed the following factors that influenced his diagnosis. He determined that the individual’s 1983 automobile accident was alcohol-related. *Id.* at 16. The individual’s blood alcohol content (BAC) was .14 at the time of the accident, yet the individual maintained he did

Statement of Charges: “After Church on Sunday around 1 p.m. [my wife and I] drank the remaining four beers ending around 2 p.m. This was 8 hours prior to the arrest.”

³ One of the elevated liver enzymes was gamma-glutamyltransferase. Quoting the Diagnostic and Statistical Manual of the American Psychological Association, Fourth Edition, Text Revision (DSM IV-TR), the DOE psychiatrist wrote, “One sensitive laboratory indicator of heavy drinking is an elevation (>30 units) of gamma-glutamyltransferase (GGT). This finding may be the only laboratory abnormality. At least 70 percent of individuals with a high GGT level are persistent heavy drinkers (i.e., consuming eight or more drinks daily on a regular basis).” *Id.* at 7.

not feel intoxicated. *Id.* at 19, 48. After the accident, the individual continued to drink alcohol, to the point of intoxication about twice a month by his estimate, even though he was aware that the local security office was concerned about his alcohol consumption. *Id.* at 16-17. During marriage therapy in April 2000 his wife told the counselor that she was concerned about her husband's drinking. *Id.* at 17. The DOE psychiatrist determined that the November 2000 domestic abuse incident was alcohol-related, because it took place after the individual had consumed six beers and because his daughters stated at the time that he drank every day and they were afraid of his alcohol-induced anger. *Id.* The individual stopped drinking after the November 2000 incident, then resumed drinking. *Id.* at 17-18. The DOE psychiatrist determined that the August 2002 domestic abuse incident was also alcohol-related, because it took place after the individual had consumed three beers. *Id.* at 18.

The DOE psychiatrist also observed a pattern of minimization of alcohol consumption. Although the individual admitted to drinking six beers over the course of the day on which he had his accident in 1983, the DOE psychiatrist gave his opinion that the individual's actual consumption that day must have been closer to 12 beers in order to support a BAC of .14. *Id.* at 19-20.⁴ I note that on cross-examination the DOE psychiatrist conceded that eight beers, if drunk in rapid succession, could produce a BAC of .14, *id.* at 45; the individual's testimony, however, is that he drank beer over the course of the day. The DOE psychiatrist also found evidence of minimization in the individual's behavior on August 18, 2002, when he told the police he had not consumed any alcohol, though he admitted to having had three beers earlier in the day. *Id.* at 18. He garnered further support for his position from a statement by one of the individual's daughters (Child X) that he was drunk almost every night. *Id.* at 21. Finally, the individual's liver enzyme test results contributed to the DOE psychiatrist's position. During his interview with the DOE psychiatrist in March 2003, the individual stated that he had once again stopped drinking alcohol. The DOE psychiatrist had the individual submit to a blood test at that time, the results of which indicated that two liver enzymes were elevated beyond normal levels. *Id.* Ruling out other possible causes for the individual's elevated readings, including a bout of childhood hepatitis A, he testified that he was not sure that the individual had in fact stopped drinking. *Id.* at 22-30. A more recent test, from February 2004, showed that the individual still was showing signs of slight liver damage that, while not medically significant, was of the type often caused by heavy drinking. *Id.* at 27. He acknowledged, however, that Tylenol taken in excess may cause liver damage, *id.* at 28, 40, and the individual had reported to him that he had been taking Tylenol in amounts beyond the recommended dosage. *Id.* at 76-77.

In response to questioning, the DOE psychiatrist testified that even if he were to discount the medical evidence of liver damage, he would still stand by his diagnosis that the individual suffers from alcohol abuse. *Id.* at 31. He bases his opinion on the "pretty

⁴ In 1991, the individual recalled that he had drunk eight beers that day rather than six. DOE Exh. 29 (Transcript of Personnel Security Interview, May 9, 1991) at 13-14. The DOE psychiatrist believes that both accounts constitute minimalization. Tr. at 20. As noted above, I accept six beers as a more accurate recollection, because it was made closer in time to the event.

significant functional impairment” caused by the individual’s drinking. *Id.* at 31-32. He continued:

[The individual] did not seem to be willing or able to change his drinking pattern, which I think, in his case, would probably have to be sobriety. With the ongoing legal problems, with the DWI, and then not responding to DOE concerns, and then having pretty significant alcohol-related domestic violence happening once, then being warned about it at work and trying to stop drinking and have it happen again, I think just those by themselves were enough to get the diagnosis of alcohol abuse. The most recent one had occurred seven months before I saw him. They were spread out in time, but still, I felt they met the criterion of being persistent and severe problems.

Id. at 32.

Finally, the DOE psychiatrist acknowledged that an individual fulfills the DSM IV-TR description of alcohol abuse if, within a twelve-month period, he meets one or more of the listed criteria, each of which includes the term “recurrent.” *Id.* at 34. For example, two of the criteria are “1. Recurrent substance abuse resulting in a failure to fulfill major role obligations at work, school, or home (e.g., repeated absences . . .) . . .” and “4. Continued alcohol use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of alcohol . . .” He also acknowledged that the events that triggered the local security office’s concern did not transpire within a twelve-month period. *Id.* at 32. Nevertheless, he found that the individual did, in his opinion, suffer from alcohol abuse. He based his initial opinion on his clinical training and judgment, and maintained that opinion at the hearing, despite the fact that it was contrary to a technical reading of the DSM IV-TR. *Id.* at 34.

At the end of the hearing, the DOE psychiatrist, who had attended the entire hearing, was recalled as a witness. When questioned whether any of the testimony presented during the hearing would cause him to alter his diagnosis that the individual suffers from alcohol abuse, the DOE psychiatrist stated that it would not, and maintained that his diagnosis was still correct. *Id.* at 165-66.

The Treating Physician

The individual’s personal physician testified that, on the basis of liver function tests he has seen, the individual does not suffer from liver damage. *Id.* at 75. He stated that a test conducted in February 2004 showed that the individual’s GGT level was slightly elevated. *Id.* at 74. He introduced the results of a liver function test performed on blood drawn from the individual nine days before the hearing, reflecting that his GGT level was within normal limits. *Id.* at 75. The physician also testified that at a consultation in February 2004, he had the sense that the individual was drinking “at a healthy to moderate level.” *Id.* at 76. When questioned about whether excessive use of Tylenol could explain the high GGT level recorded in the individual’s March 2003 blood test, the

physician stated that could not attribute the high level to Tylenol use, and was not aware whether liver damage occurring from Tylenol in conjunction with alcohol would affect GGT levels. *Id.* at 80-81. He further stated that he had no knowledge that the individual had ever consumed alcohol in large amounts. *Id.* at 82. Concerning the August 2002 incident, the physician stated that the individual had seen him the following November, and his notes from that meeting indicated that they had discussed marital stress, not alcohol. *Id.* The physician's notes from the February 2004 visit contained the individual's recollection that he had had two beers eight hours before the altercation, and that neither he nor his wife were intoxicated at the time. *Id.* at 83.

The Grandmother

The grandmother of the individual's wife offered no testimony concerning the domestic violence incidents or the individual's consumption of alcohol. In her testimony she described the difficulty of caring for Child X, now 17, who has lived with her for most of the past two years. *Id.* at 92. Child X is the daughter who told the police officers at the time of the August 2002 domestic abuse incident that her father "is drunk almost every night." DOE Exh. 25 at 5 (Statement of Probable Cause).⁵ The grandmother testified that she had to kick her great-granddaughter out of her house three weeks before the hearing because Child X was too difficult for her to continue to live with. Tr. at 93, 95. Summarizing her detailed account of life with Child X, the grandmother stated that she "lies all the time" and is violent. *Id.* at 95.

The Individual

In opening remarks the individual stated that his objective was to show that the derogatory information upon which the statement of charges was based "is, in fact, not accurate or true." Tr. at 9. In his testimony he presented facts and arguments that challenge the local security office's and the DOE psychiatrist's characterizations of the August 2002 domestic abuse incident as well as the DOE psychiatrist's characterizations of the individual's overall history.

With respect to the local security office's characterization of the August 2002 event, the individual pointed out that the local security office placed substantial weight on its finding that he falsely reported to the police officers investigating the event that he had not been drinking alcohol. He testified that he said that because "it was several hours previously [that] I had had a beer." *Id.* at 105. He sought to explain why he felt the arrest was not alcohol-related. First of all, he had consumed the beers so long before the arrest that he maintained he was not under the influence of alcohol. *Id.* at 106. Using the same formula the DOE psychiatrist relied on in his report, he calculated that his BAC would have been at most .06 when he finished drinking three beers in one and a half hours, and that he could have metabolized four beers in the four hours between then and the time of his arrest. "This shows there was no alcohol in my system." *Id.* Furthermore, he pointed out that the police officer wrote in his Statement of Probable Cause that the

⁵ The importance of this remark is that the DOE psychiatrist relied on it as evidence in support of his diagnosis. DOE Exh. 13 at 5; Tr. at 21.

individual's wife was very intoxicated, but never states that he was intoxicated. *Id.* at 103; *see* DOE Exh. 25 at 5. He argued that the police would have remarked that they observed he was intoxicated if he had been. *Id.* at 103-04. He concluded that the police report establishes that the arrest was not alcohol-related. *Id.* at 108.

The individual also set forth his objections to the DOE psychiatrist's characterization of the August 2002 event as alcohol-related. The individual felt that the DOE psychiatrist reached that conclusion relying in large part on Child X's statements to the police that her father was drunk almost every night. *Id.* at 106-07. He testified that Child X was an unreliable source for that information, for two reasons. First of all, she lacked the knowledge to make such a statement. He explained in detail how Child X had not been living with the family, but rather with her great-grandmother. In the 18 months before August 2002, she had spent only seven days with the family, and only two with them immediately preceding the domestic abuse incident. *Id.* at 107. Second, in the two days she had been home before the incident, she had been arguing with her parents and was particularly incensed at her father for setting limits on her activities. *Id.* at 109-11. Finally, he referred to the grandmother's testimony, which demonstrated that Child X is not a truthful person. *Id.* at 111.

In his testimony, the individual also challenged the factual basis underlying the history on which the DOE psychiatrist relied in formulating his diagnosis of alcohol abuse. For example, the DOE psychiatrist characterized the individual's drinking in college by quoting him: "lots of keg parties" and drinking "till you puke." DOE Exh. 13 at 2. At the hearing, the individual admitted relating that information to the DOE psychiatrist, but stated that he really did not remember that many keg parties, and that he had never stated that he himself vomited: "just for the record . . . I have never puked from drinking beer, never." Tr. at 115. As another example, he referred to his college transcript to support his statement that, while he had told the DOE psychiatrist that his grades had dropped because of excessive partying and drinking, DOE Exh. 13 at 2, they had in fact dropped very little. *See* College Transcript, attachment to facsimile received from individual, June 16, 2004. Perhaps the most important challenge to the DOE psychiatrist's diagnosis is his testimony that alcohol is not a problem for him and that his resumption of alcohol consumption did not demonstrate his inability to remain abstinent. He supported this position by referring to a statement made by a marriage counselor, and reviewed by the DOE psychiatrist, that even though his wife felt that his drinking was the cause of family turmoil, the counselor "gathered that [the individual's] alcohol consumption was not a major issue in their marriage." Tr. at 126. He also stated that the reason he stopped drinking alcohol for a year was to show the counselor and the DOE that drinking was not a cause of their marital problems. *Id.*

When asked about his current alcohol consumption, the individual testified that he was not drinking. *Id.* at 128. When questioned more specifically, he answered that the only alcohol he had consumed since meeting with the DOE psychiatrist in March 2003 was a glass of wine at Thanksgiving dinner 2003 and a glass of wine at a dinner celebrating the graduation of one of his daughters in May 2004. *Id.* at 128-29. He maintained that he had not been drinking at all when he saw the DOE psychiatrist. *Id.* at 129.

Analysis

The Notification Letter identifies Criteria J and L as the grounds for suspending the individual's access authorization. In other DOE security proceedings, hearing officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803* (affirmed by OSA, 1996); *Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771* (1995) (affirmed by OSA, 1996). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. The derogatory information that the local security office obtained from police reports, personnel security interviews, background investigations and a psychiatric evaluation were sufficient to raise substantial doubts about the individual's eligibility to hold access authorization. Based on the record before me, I find that the local security office properly invoked Criteria J and L when it suspended the individual's security clearance.

Criterion J, Alcohol Abuse

I next consider whether the individual has mitigated the local security office's concerns about his alcohol consumption. As discussed above, the individual's approach to mitigating the concerns was to challenge the factual basis for the DOE psychiatrist's diagnosis of alcohol abuse. Consequently, he must convince me that the true facts surrounding his alcohol consumption are such that the local security office's national security concerns are unfounded. Although he has demonstrated that some of the facts underlying the concerns are incorrect or unreliably reported, I find that there remains more than ample factual basis for those concerns.

The individual has maintained throughout this proceeding that he does not have a problem with alcohol. E.g., DOE Exh. 30 (Transcript of Personnel Security Interview, December 28, 1983) at 18; DOE Exh. 29 (Transcript of Personnel Security Interview, May 9, 1991) at 15-16, 21; DOE Exh. 13 (DOE Psychiatrist's Report) at 10. Even after considering the individual's challenges and corrections, the facts in this case do not support his position. In 1983 he was involved in a very serious automobile accident, after drinking, by his admission, either six or eight beers, over the course of the day. He testified that he did not think he was drunk at the time, because he would not have driven if he had thought he was drunk. Tr. at 48. Nevertheless, his blood alcohol content registered .14 after the accident. That fact is a sufficient basis for me to conclude that the accident was alcohol-related. In 2000 the individual was arrested for domestic violence, for slapping one of his daughters. In a subsequent personnel security interview, he stated that he had consumed four beers and two glasses of wine that evening while watching football. DOE Exh. 28 (Transcript of Personnel Security Interview, February 21, 2001) at 9. Later in the interview, after stating that he had been drinking but did not think he was intoxicated, he continued, "I don't [want to] make excuses for my, for my alcohol or behavior, but I know I snapped too quickly, because of that." *Id.* at 12. Whether he

believes he was intoxicated or not at the time of the 2000 domestic violence incident, there is ample evidence in the record to conclude that the incident was alcohol-related.

Finally, regarding his 2002 arrest resulting from another domestic violence incident, the individual focused on the statement Child X made to the police when they arrived on the scene, that he was drunk almost every night. He has cast sufficient doubt on the character of Child X, particularly at that moment, that I find her statement to be unreliable. Nevertheless, the other children who were present later stated to an investigator from child protective services that their parents had been drinking all day, were intoxicated and started fighting. DOE Exh. 24 (Affidavit for Ex Parte Custody Order, August 27, 2002 at 3-4, contained therein). At the hearing the individual contested the children's statements by testifying that they "don't want us to be together anyway," and that child protective services "was on a witch hunt," Tr. at 143, implying that the children were lying or at least exaggerating for their own purposes. After reading part of one child's statement into the record, "On August 18th both [the individual] and [his wife] were drinking and arguing," he went on to concede, "That's not such a wrong statement by her." *Id.* at 144. The individual's own statements about his alcohol intake on that date do not help resolve the matter. At 10:00 p.m., the time of the arrest, he told the police he had not been drinking; he later told his personal physician he had drunk two beers eight hours before the arrest, and he told the DOE psychiatrist he had finished the last of three beers at 7:30 or 8:00 p.m. There are simply too many versions of his alcohol consumption on that day for me to determine exactly what transpired. The evidence in the record is sufficient, however, for me to conclude that this incident, like the preceding two, was alcohol-related. Because I find that the three arrests identified by the local security office were alcohol-related, I conclude that the individual does have a problem with alcohol, despite his contention. I also find that the DOE psychiatrist's diagnosis of alcohol abuse is based on sufficiently accurate facts concerning these arrests that it withstands the individual's challenge as to its factual underpinnings.

The individual has presented consistent evidence that he abstained from alcohol for two extended periods. He first stopped drinking in January 2001, at least in part, because he was enrolled in a six-month early intervention program that required abstinence. DOE Exh. 28 at 26. He also stopped to prove to himself, and to the marriage counselor with whom he and his wife met, that his drinking was not causing their marital problems. Tr. at 126. He maintained his abstinence until November of that year, at which time he moved into a house of his own. *Id.* at 146, 150-51. He had stopped drinking and his marital situation had deteriorated anyway. *Id.* He stopped drinking again immediately after the 2002 arrest, and told the interviewer at his next personnel security interview that he would not resume drinking because he could not afford being labeled with an alcohol problem. *Id.* at 149. Nevertheless, at the hearing he testified that he has resumed drinking, although modestly. *Id.* at 128-29.

Clearly, through his view that the events that have raised security concerns are not alcohol-related and by his ability to abstain voluntarily, the individual has convinced himself that alcohol has not contributed to problems in his life. Based on the evidence in the record, I do not agree with his conviction. His alcohol consumption has created

substantial problems for him at work. Even if he does not agree with the local security office's concerns, he has been fully aware that the local security office has been questioning his alcohol behavior since at least 1991 and he has given assurances that he will control or stop his intake. *See, e.g.*, DOE Exh. 29 at 17-18 (stating in 1991 that his 1983 accident and arguments with his wife were due to alcohol, that he must "watch my alcohol consumption"); DOE Exh. 28 at 25, 33 (stating in 2001: "I have quit drinking. I don't drink anymore. Because I've been told too many time that . . . if I were even to open up [a] beer, . . . a terrible thing is going to happen. . . . I don't even want to drink again. . . . I'm just tired of it."); DOE Exh. 27 at 38 (stating in 2002: "I'm never gonna, I can't drink anymore. . . . If I can't have, uh, one beer or two and then all of [a] sudden label that somebody . . . has an alcohol problem, then I just won't do it anymore. I can't afford, afford it. [Interviewer's name], I remember last time I sat across from you here and you told me if there were any more alcohol incidences it could very much put my clearance in jeopardy.") Despite his long-standing awareness of the local security office's concerns about his alcohol use, he continues to consume alcohol. Furthermore, as I have discussed above, I believe that alcohol has contributed to his problems at home as well. Continuing to use alcohol after facing all these difficulties at home and at work demonstrates to me a serious lack of judgment and insight.

The individual's burden in this proceeding was to convince me that his previous behavior does not raise substantial national security concerns under Criterion J related to alcohol abuse, or that those concerns have been overcome by mitigating evidence. After considering the full record, including all the documents submitted by both parties and the testimony received at the hearing, I find that the individual's behavior has raised legitimate security concerns, and I am not convinced that those security concerns have been successfully resolved. Consequently, I find that the individual has not overcome the security concerns associated with his alcohol abuse, and I cannot recommend restoring his access authorization at this time. *See Personnel Security Hearing*, Case No. VSO-0480, 28 DOE ¶ 82,836 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

Criterion L, Unusual Conduct

The record of this proceeding establishes that the individual has been arrested three times since 1983. Despite the individual's efforts, he has not convinced me that any of the arrests were not alcohol-related. As he does not believe that he has a problem with alcohol, and he continues to drink alcohol, he has not convinced me that he will not engage in activity that might result in future alcohol-related arrests. Therefore, I find that the individual has failed to adequately mitigate the DOE's concerns under Criterion L at this time.

Conclusion

Based on the record in this proceeding, I find that the individual has not resolved the security concerns under 10 C.F.R. § 710.8(j) and (l) that were specified in the

Notification Letter. For the reasons explained in this Decision, I find the individual has not shown that restoring his access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual's access authorization should not be restored at this time. Either party may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

William M. Schwartz
Hearing Officer
Office of Hearings and Appeals

Date: March 11, 2005